

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

Alan Newell,

Plaintiff,

v.

Alloy Polymers et al.,

Defendant.

Case No. 2:12-cv-616

Judge Graham

Magistrate Judge Abel

**ORDER**

Before the Court is defendants' motion to dismiss count IV of plaintiff's complaint pursuant to Fed. R. Civ. Pro. 12(b)(6) or in the alternative 12(b)(1). (Doc. 6.) Defendants argue that plaintiff's claim arising under the Americans with Disabilities Act, 42 U.S.C. § 12111 *et seq.*, must be dismissed because plaintiff has failed to exhaust his administrative remedies and has not obtained a right-to-sue letter from the Equal Employment Opportunity Commission.

In response, plaintiff asserts that the ADA claim "was filed in error," and purports to amend his complaint to omit that claim. (Doc. 9.) However, once a responsive pleading has been filed, in this case an answer, the complaint may only be amended by leave of the Court. See Pertuso v. Ford Motor Credit Co., 233 F.3d 417, 420 (6th Cir. 2000) ("Fed. R. Civ. P. 15(a) gives plaintiffs an absolute right to amend their complaint one time before a 'responsive pleading' is served . . ."). Once a responsive pleading has been served, a plaintiff may amend the complaint by leave of the Court. *See* Fed. R. Civ. Pro. R. 15(a)(2).

The Court construes plaintiff's purported amended complaint (doc. 8) as a motion to amend his complaint and GRANTS that motion. Given that the amended complaint does not include the claim for which defendants seek dismissal, their motion to dismiss (doc. 6) is DENIED as moot.

IT IS SO ORDERED.

s/ James L. Graham  
JAMES L. GRAHAM  
United States District Judge

DATE: September 10, 2012